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Supreme Court of the United States

October Term, 1970

No. 1149

WILLIAM J. DAVENPORT,

Petitioner,

vs.

CITY RENT and REHABILITATION ADMINISTRATION of the City of New York, JOHN V. LINDSAY, as Mayor of the City of New York,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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To the Chief Justice and the Associate Justices of the Supreme Court of The United States

Your petitioner, WILLIAM J. DAVENPORT, petitions for a Writ of Certiorari to review the dismissal without trial of petitioner's complaint(s) seeking an original hearing to determine the facts, and applicable law, of support for orders of the New York City Rent Control Administrator.

The present complaint 70 CIV 1011, appeal No. 35902, was dismissed without appeal court hearing or opinion on motions of procedure. The complaint had been dismissed without trial as res judicata of a prior action 68 CIV 4984 which

similarly had been dismissed without trial on procedural cross motions. The court apparently not having in either action recognized petitioner's complaint obscured by preconceptions and confusion advanced by respondent.

Petitioner hereto, seeking to maintain ownership, and supply residential service of rental to tenants of an apartment building subject to New York City Rent Control laws, seeks necessary review of summary orders of the Rent Administrators based entirely upon "the opinion of the administrator," without determination of the facts. Which are presumptive and in error as stated in Administrative orders, which have been termed "within the provision of law" by the New York State Supreme Court, petitioners prior complaint, 68 CIV 4984 was dismissed without trial by U.S. District Judge John M. Cannella on July 25, 1969 stating the complaint as presented insufficient to justify federal trial. Appeals Court decision No. 345 affirming the decision on Dec. 29, 1969 stating two causes of the "insufficiency."

The present action intended as correction was dismissed by Judge Charles Tenney on May 11, 1970 without trial, stating RES JUDICATA of the former action.

Thus there has never been any hearing to examine the law, or determine the facts either at court proceedings or administrative level. The consequence of the Administrative orders deprive petitioner of his property, and thus far have obstructed the procedures of lawful petition and redress. Petitioner herein seeks to attain the benefits provided by the specifications of the in-

volved Rent Control Law, and secured by Constitutional warrantees of Art's 1, 2, 4 and 5; and amendments thereto 4, 5, 6, 7, 8, 9, 10, 13 and 14.

Opinions Below

There was no opinion stated by the Appeals court.

The memorandum No. 36779 of District Court Judge Charles Tenney of May 11, 1969 states "...to permit maintenance of the present action would do violence to the wholesome principle of res judicata and its purpose to terminate litigation where parties have had full opportunity to be heard on the merits of their respective claims. ... Even assuming that plaintiff has touched upon some additional argument in his present complaint, the prior decisions on the merits... foreclose relitigation....

Accordingly, plaintiff's motion for injunctive relief is denied and defendants' motion to dismiss the complaint herein and to quash the plaintiff's subpoena duces tecum are granted." The complaint was dismissed without trial.

Reference of res judicata to 68 CIV 4984; similarly dismissed without trial on cross motions of procedure by U.S. District Court Judge John M. Cannella, memorandum No. 36038 on July 29, 1969 the court's statement shows error of judicial reference and concern in the footnote reference to a law non-existent at the time of decontrol.

"Rent Control Law,"[1] to be —:

"1. Title Y, Ch 51 of the N.Y. City Admin Code.

As to the claim of lack of due process of law with respect to the plaintiff's decontrol proceedings the court finds that the requirements of due process have been met by adequate proceedings and judicial review in the state court. Further the court determines that the complaint is without merit and lacks the substantiality requisite to the institution of a federal claim."

In both of the foregoing dismissals, the courts simultaneously quashed petitioner's subpoena(s) duces tecum by which petitioner sought original access to the original records, continually kept secret by respondent, that the considerations of the court might have been more informed of the facts.

This decision was appealed, Docket No. 34027, on Dec. 5, 1969 before Justices Waterman, Hays and Feinberg, of the U.S. Court of Appeals for the Second Circuit, whose decision on Dec. 29, 1969 No 345 while affirming the lower court stated:

"To the extent that the complaint and papers allege loss of money or property rights, absent racial discrimination, they gave the district court no sufficient basis for determining that plaintiff's claim met the jurisdictional minimum of either 28 U.S.C. §1331 or U.S.C. §1332 and did not meet the requirements minimum of either 28 U.S.C. §1343,...mere supporting statements:..., without supporting facts, are not sufficient. ..."

A further opinion of the N.Y.S. Supreme Court in reference did not consider the question before it, having erroneously accepted the statement of defendant as proven fact, and having stated as cause and fact of determination in the published finding of the court a totally unsubstantiated, false, and unrelated allegation of defense counsel which was contrary to the prior finding of defendant Rent Administrator. The court's decision being further based upon law which did not exist at the time in question. The appeal within the New York Courts was denied without opinion.

The opinions are all attached hereto in the appendix.

Jurisdiction

Jurisdiction of this court is sought as a last resort, petitioner believing the lower courts to have acted precipitiously and in error where jurisdiction does in fact reside with the federal courts both in consequence of the constitutional and civil rights of petitioner infringed under color of law as prohibited by Art. 1, Sec. 10, cl 1; and the 14th amendment thegeof, and 28 U.S.C. Chap. 155, Sections 2281, 2283, and 2284.

Jurisdiction is also claimed by diversity of citizenship in that petitioner is a citizen of the State of New Jersey, defendant is an agent of the State of New York and City of New York, and the value involved is severally more than ten thousand dollars ($10,000.00); under 28 U.S.C. Sec. 1331 and 1332, and 1343.

Jurisdiction is also sought under 42 U.S.C. Sec. 1981, 1982, 1983, 1984 and 1985. In that petitioner is a black person and seeks to demonstrate that he is being discriminated against on the basis of his black identification and the previous condition of his ancestors in slavery, which would be contrary to the Thirteenth and Fourteenth Amendments of the Constitution.

Original Jurisdiction of the Federal Courts derives from the treaty rights of this petitioner as a citizen of the United States, and entitled thereby to the treaty provisions of United Nations Charter guaranteeing his rights to own and use real property.

The date of dismissal of petitioners complaint without opinion by the U.S. Appeals Court for the Second Circuit was September 24, 1970, the orders were entered on Docket No. 35002 on September 25, 1970.

The prior memorandum of dismissal No. 36779 of 70 CIV 1011, by Judge Charles Tenney was dated and filed May 11, 1970.

Questions Presented

1. Did the District Court improperly apply the principle of res judicata to deny petitioner a first opportunity of trial, a first opportunity to a hearing of his complaint, and simultaneously quash petitioners subpoena duces tecum by which he sought first access to the essential records upon which the complaint is made and the action based?

2. Has the petitioner been continually denied

necessary due process provided by law and required to determine the facts relative to his complaint?

3. Has New York City unlawfully seized, confiscated, and assigned the lawful property of petitioner to third parties without cause, without warrant, without oath or affirmation, and without in fact describing or even admitting the fact of seizure?

4. Is the Administration and Enforcement of the New York City Rent Control Law consistent with its specifications of purpose, requirements and responsibility, as provided within the law and by constitutional authority.

The Facts

The facts have not yet been entered into the official records available to this court. Original errors of the New York City Rent Administration have been made a part of the official records without petitioner's knowledge, or opportunity of reply or correction. Administrative action and orders thereupon without proper procedure for determination of the actual facts has been contrary to law, and destructive in the extreme to petitioner. No provision in any so-called review has permitted petitioner examination or opportunity to correct these errors which have been hidden with bureaucratic efficiency using thereto the full force of government.

Petitioner, pro se, is a novice to court procedures and form, and while seeking to comply with the court rule of brevity must attempt to penetrate and set aside a murk of confusion and

error continually presented and maintained by defendant counsel in error or ignorance which has hidden the facts that are the cause and core of this action.

The primary consideration and basic question of all considerations hereto are of original fact and applicable law, which should have been determined and stated at the lowest administrative level. This has not been done. There was no hearing, no access to information of cause, question, opportunity thereby of reply, or statement of consequence by the responsible defendant Rent Administrators office to petitioner. There has continually occurred since that time, gratitious insertions of new, false and totally unsubstantiated allegations by defense counsel, which appear to have been taken from statements of previous court decisions in other cases, and inserted in briefs before the courts solely to obtain repetitive performance by the courts in a state of confusion.

This procedure of defendant counsel, combined with the fact that petitioner has continually been denied access to the records, and is unaware of the rules and methods of court determinings, has served to elicit considerations and determinations by the courts on presentments not concurrent with reality.

Petitioner therefore seeks to present essential background of related fact, and the facts from circumstance known to him as the involved principal and witness to the facts in the most concise form of which he is capable.

This matter was before the District Court on

a motion for a Temporary Restraining Order in the action 70 CIV 1011, and dismissed without trial; the court stating res judicata of 69 CIV 4984, which similarly before the court on a motion for a Temporary Restraining Order, was dismissed without trial.

Petitioner, owns and seeks to operate a small apartment building consisting of eight six room apartments, located in the Bronx New York, and subject to the provisions of Rent Control laws which originating in 1943 as Wartime Price and Wage Controls by the Federal Government, have been continued since 1949 by the State of New York. The stated purpose of these laws is to prevent excesses and abuses of the market in rental housing. The law is economic in nature, and during these 27 years the economy has changed. The official study by the Rand Corporation made for the City of New York and released in 1970 indicates that during this period costs have increased six percent (6%) annually while controlled rents have increased only two percent (2%) annually. Computation thus indicates that in 1970 controlled rents have decreased to only fifty seven percent (57%) of the necessary maintenance and operating costs.

Petitioner, subject to the foregoing circumstance, has sought to know and is totally unaware today, of any failure to comply with the involved law. He has been subject to rulings and orders of the Rent Administrator(s) which deny him the provisions of necessary relief specified within the involved law. The law requires procedures of administrative examination where basic questions of fact exist, assigning the Rent Administrator the

responsibility of effecting the basic intent of the law, without specifying the exact procedures.

The simple blatant fact of this case is that petitioner has as not yet been allowed access to the involved records upon which all legal action herein depends, and upon which the involved orders are based. Petitioner has been unable to obtain any hearing in which charges against him have been stated, witnesses produced and examined under oath, or even face to face conference on the charges with any Rent Administration official. Nor has petitioner been able to obtain factual statements in written form from the Rent Administration of the basic status of his affairs as regulated, in a manner providing him with necessary security with which to enter either contracts or the courts as required to maintain his business.

The immediate consequence is that this case arrives in this high court in a state of continued confusion, where the facts and the law have been hidden, suppressed, and obscured. Petitioner's purpose before this court is to penetrate that confusion, expose the facts, and correct the record, that the law might be maintained. However, in the history of these proceedings, at every stage, the Rent Administrator, directly or through the performance of his attorney in court, has in some manner prevented such an opening of the record for examination and correction. Thus the Rent Administrator(s) have continually suppressed and hidden the facts which the law requires him to determine and expose.

Petitioner comes before this court with three general complaints, chronologically within the story:

Petitioner, a Negro, having sailed during World War II as a Merchant Marine Radio Officer, had extreme difficulty locating adequate employment ashore during the 1947-54 period, and in direct consequence thereof, seeking to establish his own business and needing a credit background, in 1954 purchased the involved building, which constructed in 1900 of brick and stone with wood interior, was structurally sound requiring normal maintenance for its age.

Petitioner, personally managing the building during 1954-1955 found that operating costs of $7,200 could not be met by controlled rents of $5,900 annually, and sought to obtain the "insufficient return" increase provided by law. The application was denied on the basis of Rent Control Administration accounting which rejected as "policy" all handwritten receipts out of hand; actual janitorial costs being substituted by an "allowance" which was less than lawfully required minimum wages and the cost of insurance; and amortized furnace repairs over eight years as a "capital improvement." Petitioner sought the Administrator's review mandated, upon request, by law. The "review" provided consisted solely of the same accountant reviewing his own work and approving it. Legal redress was at that time not sought due to the costs of litigation. This is one of petitioner's complaints and included properly only in 70 CIV 1011.

Petitioner still seeking to obtain needed operating funds for the building from rents, as the tenants moved out, sought to use Section 2(2)(h) of the New York State Emergency Rent Control Law as amended in 1954, which provided release from

control (decontrol) of apartments upon re-rental after one year of owner occupancy. Therefore petitioner moved into and out of these apartments for the prescribed period of time between 1955 and 1960 in accordance with the information provided by the New York State Rent Control Commission official personnel. Proper notification on forms provided by the State Rent Control Commission were duly filled, and properly filed. The information was examined by official personnel of the State Rent Commission and accepted with approval, however as Rent Commission policy no statements in writing were supplied the owners. Rents were set in these "decontrolled" apartments at free market rates, consistent with operating costs.

Subsequent to this in 1962, New York State generally discarded Rent Controls, permitting their retention in, and assigning administration to, New York City. Regulations, policy, procedure, and administrative supervisory personnel were changed at this time.

In 1963, petitioner received a postcard notification from the new New York City Rent Administration District Office that his "applications" were assigned docket numbers. By this reference the prior "Notices of Statutory Decontrol" were being reclassified as "applications." Thus New York State Docket DR-3974 was labeled 2AD-2248, DR-5420 labeled 2AD-2249, DR-6643 labeled 2AD-2250, and DR-7855 labeled 2AD-2251. What is not stated is that reference in the former dockets are to provisions of the NEW YORK STATE "Emergency Housing Rent Control Law, amended 1955," Section 2(2)(h) of the act; and that the new

reference is intended to apply to totally different provisions of changes made in the subsequent New York City Public Law No. 20 of 1962 (N.Y.C. Adm. Code, Ch. 51, Title Y.)

Subsequent to this in 1964, the District Rent Director, first sent notices to tenants and petitioner's attorney, but not to petitioner that the "reports on statutory decontrol were to be revoked, and prior rents re-established..." (stating various grounds intended), and later sent notices that this had been done, stating "Landlord's Report on Statutory Decontrol DR-...is revoked," and that rents were re-instated as of the date of decontrol. Throughout this period petitioner sought and was denied relevant information, official contact, hearing or other first hand knowledge necessary to clarify the situation, but was by administrative order refused and denied, and forced to deal through the inadequate services of attorney, through whom pertinent information was not passed.

In January 1965, petitioner through his attorney, sought administrative review as mandated upon request by the Rent Control Laws. In December 1965 the New York City Rent Administrator without further investigation, without hearing, without any contact in which petitioner was accorded information or opportunity to be heard, issued a statement supporting the action of the District Rent Director. Thus petitioner was denied the Administrative review required by law, the Rent Administrator not even seeking to know the grounds or cause of petitioner's complaint.

Petitioner's second complaint hereto derives; that these orders of the Rent Administrator are

(1) without authority of law, being a review of statutory performance falsely stated to be original examination of applications; (2) seek to apply ex-post-facto provisions of law to acts prior to their existence; (3) that petitioner was denied due process of law, and that the facts were not determined; (4) that the District Rent Office Director and New York City Rent Administrator in these orders seized by indirect procedure of assignment, the rent monies lawfully belonging to petitioner; (5) by the implication necessary to the facts of law upon which authority was claimed, petitioner was accused of perjury and fraudulent filing, which is a felony under the laws of the State of New York. Petitioner was held responsible by these orders for penalties thereof contrary to the laws section 4 for a criminal act to the extent of thousands of dollars, and contrary to the Sixth Amendment to the Constitution was denied opportunity of defense or public trial. (6) By effect of the terms of the order petitioner was in fact held responsible to pay penalties to the tenants, for alleged breaches of contract which if true would have been the act of the tenants, solely because petitioner was the landlord, which is an order of attainder contrary to constitutional prohibitions. (7) That inasfar as the law itself is police authority of the State of New York, it is limited in use by purpose to necessary application to obtain the intent stated. No such limitation of use has been here recognized by any representative of the Rent Administration.

Subsequent to 1964, petitioner has sought Rent Administration approval of rent increases in various apartments in the subject building consistent with operating costs, under Section (x) 33.4 stating

low rents under unusual circumstances, of the New York City Rent Regulations of 1962, but in each instance petitioner has been denied consideration of his application on one pretext or another. This is petitioner's third complaint, and stated only in 70 CIV 1011.

Petitioner in 1966, through attorney(s) sought review of the Rent Administrator's orders in the New York State Courts. The original action was defective through inadequate presentation by petitioner's attorney, but the determination of the court was based on a new, false, totally unsubstantiated, and unknown-to-petitioner-at-that-time claim originated by the Corporation Counsel of the City of New York; which the court included in its statement of decision as the reason for the decision. This statement was contrary to the prior findings of the Rent Administrator, the claim being that petitioner had "sought to create an appearance only, but never really lived in the apartments."

Petitioner has never been able to examine, either prior to, during, or subsequently, the file presented in evidence to this court. Petitioner personally knows the inaccuracy of statements in the opposition briefs was denied direct reply to the record on the specific instructions and orders of Maurice Reichman, as the then Chief Counsel for the New York City Rent Administration.

An appeal to the Appellate Division of the New York Supreme Court was dismissed without any statement of opinion.

A complaint instituted in the federal courts as a class action by an attorney in 68 CIV 4984,

sought both to bring the individual questions of petitioner before the court and contest the constitutionality of the Rent Control Law as administered. The court indicated no recognition of the individual factors of petitioner's case, or the elements questioning Administration of the Rent Control Law. The court accepted the opposition definition of petitioner's complaint, treating the claim as subject to the New York City Regulations promulgated in 1962 without question. The complaint was dismissed without trial on a cross-motion of defense by Judge Cannella, who stated the case filed as insufficient for federal trial. Appeal Justices Waterman, Hays, and Feinberg sustained the lower court, specifying elements of insufficiency of presentation.

Petitioner, now financially depleted, sought to enter necessary corrected action before the court as 70 CIV 1011. Attempting to correct the causes of dismissal of the earlier action the necessary information specifying the cost involvement necessary for U.S.C. Title 28, Sec. 1331 & 1332 was included, class action was dropped, and petitioner's additional third ground of complaint was included. Petitioner continually suffering losses induced by the existant orders of the defendant Rent Administrator sought relief during the pendency of the action, by a Temporary Restraining Order. The court instead, dismissed the action as "Res Judicata" of the prior action, noting the additional claims and discounting them, simultaneously quashing petitioner's subpoena duces tecum by which he still sought first access to the original public records upon which all this is based.

Petitioner, thereupon filed on June 20, 1970 appeal Docket No. 35002 with the United States

Court of Appeals for the Second Circuit. The application by petitioner for five additional days to file papers was answered by an opposition cross motion to dismiss on July 13, 1970. Petitioner's papers with the court's approval were filed on July 27, 1970, including the brief, appendix, and Motion for Temporary Injunction and Restraining Order.

On July 28, 1970 United States Circuit Judge Leonard P. Moore ordered: "It is hereby ordered that appellant's motion be consolidated with his appeal to be considered by the panel hearing the appeal and that his papers may be filed as is."

On August 19, 1970, Chief Justice of the Appeals Court for the Second Circuit J. Edward Lumbard, signed and the court clerk filed an order granting an ex-parte application by appellee Rent Administration, which had not previously been entered on the docket, and of which petitioner-appellant had received no notice or service. This order granted appellee 30 days to file subsequent to decision of the court upon appellee's motion to dismiss. The effect was to reverse the order of Judge Moore and require that petitioner present his full argument without ever having seen even the original Administration Record, and thereafter should the court concede cause for the complaint, appellee would have thirty days to invent further claims and allegations which could not then be disavowed by appellant.

Petitioner thereupon entered a motion to vacate the above order. Further on September 3, 1970, with a foreclosure application of the mortgage company now in the New York Supreme Court,

petitioner again sought a Temporary Restraining Order. On September 24, 1970, petitioner discovered that this application had been altered as docketed to request dismissal of Judge Leonard Moore's prior order supposedly at the request of appellant, by the office of the Clerk of the Court without petitioner's knowledge or authority.

Petitioner thereupon telephoned Judge Hays' secretary, seeking to delay action by the court, and obtain a hearing upon all this which procedurally destroyed his position before the court. As of that day, the motions in the file were all decided against petitioner to dismiss his appeal without opinion. These papers were docketed on September 25, 1970. From the foregoing it should be evident that the procedure within the appeals court was utter confusion.

Thus petitioner enters this Nation's highest Court, still seeking an original hearing in which questions and issues may be disclosed, charges stated, evidence and witnesses impartially examined under oath, and that he may have opportunity to be heard and enter his statements and claims into the record; that the facts might be determined to permit necessary considerations and give the true authority of law to administrative orders resultant therefrom. This Court is asked herein to provide the hearing which should have occurred in the lowest administrative office, at the earliest possible date. But which has not occurred, although defendant attorneys have continually sought successfully to mislead the Court into the presumptive error that it had, by statements and allusions of reference apparently thereto.

Petitioner as of this date, is in the federal courts seeking to forstall and prevent mortgage foreclosure and total loss of his years of effort and financial investment in this property. Which foreclosure action is the direct result of the Rent Administrator's orders contested herein, and the facts in brief are these.

Petitioner obtained a Certificate of Eviction to clear Apartment No. 1. The hearing thereto was on February 2, 1955 with the Certificate issued July 13, 1955. The tenant therein having departed in August 1955. Petitioner took occupancy placing his belongings therein in late August 1955. Petitioner actually took residency therein on September 5, 1955. Petitioner having agreed to re-rental upon departure to a friend living with him as roomer, sought information toward filing decontrol notice on October 14, 1957 at the New York State Rent Control Office. At that time he was informed by clerks and a hearing officer of the Commission that he could file rental any date subsequent to July 13, 1957. For the convenience of not repeating a trip to that office, the date for rent collection of the 15th of the previous month was used.

Thus the Certificate of Eviction had been obtained for more than two years and one month by any count. Petitioner had occupied the apartment for two years and two months actually residing therein for over two years on October 14, 1957.

The Rent Administrator's "NOTICE OF COMMENCEMENT OF PROCEEDING TO DETERMINE FACTS OR FIX MAXIMUM RENTS [Section 36]" dated July 27, 1964 informed the tenant, the there-

in Mr. & Mrs. William Watts, in statement No. 9. "Maximum legal rent proposed is the registered rent, which remains" (i.e. — 1955 rental of $55. a month). "NOTE: Landlord's Report on Statutory Decontrol [2DR-3974] is to be revoked. The record indicates that it does not meet the two year requirement after the issuance of a Certificate of Eviction. . . ."

The requirement referred to is Section 2 (2) (h) of the amended New York State Emergency Housing Rent Control Law of 1955.

> "Housing accommodations which are rented after April 1, 1953 and have been continuously occupied by the owner thereof for a period of one year prior to the date of renting; provided, however, that this paragraph shall not apply where the owner acquired possession of the housing accommodation after the issuance of a certificate of eviction pursuant to the Rent and Eviction Regulations within the two year period immediately preceding the date of such renting, and provided further, that this exemption shall remain effective only so long as the housing accommodations are not rented for other than single family occupancy."

It is obvious in the foregoing that the condition of law is met, and the administrative presumption is in error, which states intent at the "COMMENCEMENT OF PROCEEDINGS. . . ."

In August 1964 the tenant refused to pay the rent, and was given a dispossess notice. On August 15, 1964 a suspicious origin fire occurred

in the apartment which burned out that apartment and the one above causing a rent loss for two years rentals, the cause officially "Not fully ascertained, probably tenant's flexible wiring" and a total loss to owner-petitioner of approximately five thousand ($5,000) dollars, causing total disruption of petitioner's affairs at the time.

Simultaneously this tenant brought suit contrary to Sec. 11 (4) of the rent law for triple damages of rental overcharges based on the promised rent determination to be administratively provided.

On December 11, 1964 the New York City Rent District Director issued the promised order stating the rent to be controlled at $64.95 monthly. The court will be interested to know, no determination of operating cost was sought prior to this order, those operating costs were approximately $95/mth/apt.

The suit for damages was delayed in the courts, and a default order occurred on January 20, 1967 when petitioner's then attorney, failed to appear in court. By later agreement this default was suspended pending appeal. This appeal has been forced to continue herein. However, action to enforce collection by sheriff sale on January 20, 1970 was blocked, and an action to enforce collection by garnishee of rents was effected commencing March 1970. Consequently at this date the building deteriorates without incoming funds for operation and maintenance, and the mortgage is unpaid for the past eight months.

Action upon that mortgage foreclosure rests in the United States Second Southern District Court

of New York as Docket 70 CIV 3878, and lacking necessary court determination reflected from this presentment to this high court, will probably progress to this level with the same basic questions presented between different parties in a different manner.

Prior consideration of this apartment situation is:

> RENT ADMINISTRATOR'S STATEMENT of December 16, 1965 "Apartment No. 1 had been landlord-occupied for less than two years after the issuance of the certificate of eviction...." Credit appears to be given for October 4, 1955 thru September 15, 1957, a period of residence of one year forty-nine weeks, which more than meets the one year occupancy requirement.
>
> NEW YORK STATE SUPREME COURT, re: Art No. 78 proceeding "the record submitted herein is replete with inconsistencies in the landlord's chronological sequence... it clearly appears that the landlord deliberately made an effort to create an appearance of technical compliance ... in all ... failed to satisfy requirements of bona fide owner occupancy of the apartments ... denied ...."

This court may note that the record was inaccurate, and failed to support with evidence the claims of the administrator which were accepted by the court as proven in the absence of contest by petitioner, who had no knowledge of their submission. The statement of the court contradicts the stated finding of the rent administrator noted in the preceding paragraph.

The reference of the United States District Court hereto in 68 CIV 4984 is that the court finds the questions presented insufficient to justify federal trial, applying thereto an ex post facto, 1962 Provisions of Law.

Subsequent implied reference of the United States District Court relative thereto in 70 CIV 1011 is res judicata of the prior action.

Thus petitioner has met the conditions of law, and in consequence of administrative orders relative thereto, is being deprived of thousands of dollars investiture, and in effect denied the right to own rental property in New York City.

Constitutional Provisions Involved

Article 1, Sec. 9, Clause 3

> "No Bill of Attainder or ex-post-facto Law shall be passed."

Sec. 10, Clause 1

> "No State shall...; pass ..., ex-post-facto law, or law impairing the Obligation of Contracts, ..."

Amendment 4

> "The right of the people to be secure in their ..., houses, papers, and effects, against unreasonable searches, and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly

describing the ... things to be seized."

Amendment 5

"No person shall be held to answer for a ... infamous crime, unless on a presentment or indictment of a Grand Jury, ...; nor be deprived of ... property, without due process of law; nor shall private property be taken for public use without just compensation."

Amendment 6

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of ...., and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, ..."

Amendment 8

"Excessive ... not ... required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Amendment 9

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Amendment 13, Section 1

"... nor involuntary servitude, except ... punishment for crime ..., shall exist within the United States...."

Amendment 14

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of ...property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Provisions of the Emergency Rent Control Law of the State of New York Which Are Involved

REF: Abbott, 178th Session, October 1955, Vol. 2, Ch. 685, p. 1585

Section 2(2)(h) of the Act. EXEMPT FROM CONTROL

"Housing accommodations which are rented after April 1, 1953 and have been continuously occupied by the owner thereof for a period of one year prior to the date of renting; provided, however, that this paragraph shall not apply where the owner acquired possession of the housing accommodation after the issuance of a certificate of eviction pursuant to the Rent and Eviction Regulations within the two-year period immediately preceding the date of such renting, and provided, further, that this exemption shall remain effective only so long as the housing accommodations

are not rented for other than single family occupancy."

Section 16, of the Act, 1961

"Except for matters pending before the commission, no action or proceeding, civil or criminal, when this act as amended shall take effect, brought by or against the commission shall be affected or abated by the enactment of this act or by anything contained herein, no existing right or remedy of any character shall be lost or impaired or affected by such enactment."

(Reference of the above is to transfer of Administration and regulation from New York State to New York City, the law being based upon the Police Authority of the State of New York.)

Section 4 (8) — GENERAL AUTHORITY OF ADMINISTRATORS)

"The powers granted in this section shall not be used, or made to operate, to compel changes in established rental practices, except where such action is affirmatively found by the commission to be necessary to prevent circumvention or evasion of any regulation, order, or requirements under this act.

Section 11 (4) — ENFORCEMENT

"No person shall be held liable for damages or penalties in any court, or on any grounds, for or in respect for anything done or omitted to be done in good faith pursuant to

any provisions of this act or any regulation, order or requirement thereunder, not withstanding that subsequentially such provision, regulation, order or requirement may be modified, rescinded or determined to be invalid."

Argument

I.

THIS COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE FACTS HAVE YET BEEN DISCLOSED AND INCLUDED IN THE RECORD AND THEREBY WHETHER PETITIONER HAS BEEN AFFORDED DUE PROCESS.

The central question of this lengthy and confused litigation is whether the facts have been properly included in the record, and whether that record has been properly considered and fairly determined according to the law. In the simple layman's language of this pro se petitioner, it has not been done. Petitioner is forced to present this action doubly disadvantaged; the first being that respondent Rent Administrators have created a record in secret, which petitioner has not been able to examine even by subpoena; the subpoena's having been quashed in petitioner's two actions in these federal courts, thus denying even that information. Petitioner further is a layman of limited legal knowledge and without legal experience or expertise, respondent hereto is an agency of government using the full facility of government, seeking to overwhelm petitioner, and whose effort hereto is directed to preventing disclosure of the record.

This court should note, that these questions now existent before the court, are by responsibility of law the specific assigned work to be performed by respondent in a lawful manner, and the question existent is whether respondent has performed as required. A paradox occurs, respondent is a quasi-judicial agency of government. The very agency who is defendant hereto has continually entered the courts to provide definitions and claims of and as expert in the law, as an agent of the court in this action against itself. The claim of petitioner is that the record has not been properly developed, yet that agency while keeping the record secret from petitioner has been able to insert its version of that record, and its interpretations thereto which have been accepted by every lower court as proven fact. Petitioner thereto has been limited to blind denial of the statements in the briefs of defense counsel, and denied opportunity to contest the presentment of the rent administrator. Petitioner has further claimed erroneous application of the provisions of law. There have been continual changes which are noted in all the books of law, the acts of petitioner in question occurred between 1955 and 1960, yet every prior court has accepted respondent's claim to proper usage of the subsequent changes of the law since 1962. The law itself has not been used by any prior court as the point of reference. All prior courts having accepted the incorrect and erroneous presentation of defense counsel instead.

These are the presumptive errors of the lower court based upon incorrect claims of the respondent, Rent Administration of the City of New York.

a. Four apartments were decontrolled under the

1955 law of the State of New York between 1955 and 1960 not Title Y, of N.Y.C. Adm. Code of 1962 and thereafter the control exemption was statutory, and confirmed by the New York State Rent Commission, and the records were closed.

The Rent Administrator of the City of New York did not consider an application thereto, since none could or did exist. By provision of law a notice of compliance did exist and was improperly classified by the Rent Administration of New York City for unspecified reasons.

b. The specific authority of the Rent Control Law of 1962 by Sections 4, 11, and 16 forbade the usage of that law in the manner of administrative application hereto. The applicable provision of law applying to all of petitioner's exemptions from the control provisions of the law derive from Section 2(2)(h) of the New York State Emergency Housing Rent Control Law amended 1955 and amended 1959. Further, should such provisions ever be caused to apply by statutory performance, there is a prohibition within the law against such retro-effective orders as the rent administrator has sought to invoke.

Further, whether to these exempted apartments, or to apartments generally, the rent control law assigns the rent administrator specific responsibility for maintaining rents at market rates. The available evidence of this date is that this consistently has not been done. Further it is a point which petitioner seeks to enter in the record, that it has not been done in his situation, but the exact in-

verse has been ordered by respondent.

c. Further, the authority supplied by the Rent Control Laws generally to the office of the rent administrator can not lawfully be exercised other than according to the precepts of law. The entire circumstance of this complaint is that the rent administrator has so intruded his personal opinion and prejudice into the performance of his duty that the concepts of law have not existed. This presents the question of DUE PROCESS OF LAW.

The procedures of due process of law may vary, and respondent investigating any question which is before this court was not required by statute to hold hearings. The procedures of DUE PROCESS however require the fullest possible determination of the facts, development of a true record, and enforcement thereto of the law.

Involved hereto is the rental money, and real property of petitioner, and orders of the rent administrator denying them must by Constitutional Law be limited to probable cause, which must be of record, and shall not cause involuntary servitude, abridge the immunity of citizens, or impair the validity of contracts.

The acts and orders of the rent administrator relative to Orders dated July 27, 1964, December 11, 1964 and December 16, 1965 set aside prior administrator's acceptance, statutory performance and statutory provisions of law, petitioner's sworn testimony and ignored and denied Sections 4, 11 and 16 of the New York

State Rent Control Law, effective as of those dates.

Further these orders by denial ruled that petitioner's sworn statements were perjury and fraud, thus collected rents were fraudulent and grand larceny, which is a felony in the State of New York, by not making the criminal charge which must place determination before the court, the rent administrator sought by his orders to hold petitioner civilly responsible for damages contrary to the Fifth Amendment to the Constitution, and infringing upon petitioner's rights as stated by the Fourth, Sixth and Eighth Amendments thereto.

All of the foregoing was done, solely on the rent administrator's "Opinion's."

Petitioner hereto, sought administrative hearings during this period, relative to such notices as he received. Although the rent administrator was the responsible agent for exposing the fact, hearings were denied. Petitioner was given no statement of the issues or questions of administrative uncertainty. (Respondent's counsel has referred to petitioner having been given opportunity to answer questions. This consisted solely of reply to questions specified by the rent administrator, without known purpose, and limited in content.) Petitioner was not informed of the cause, intent, or possible consequence of this alleged investigation.

Petitioner throughout this period between September 1963 and December 1965, during which respondent iniated and proceeded with his action

and issuance of orders, sought and was denied information specifying the issue(s) and/or to know the charges against him, the purpose of the proceeding, to know and examine the evidence and witnesses against him, and to answer and provide witnesses for examination. Thus the record is totally a secret creation of the New York City Rent Administrator.

The record accepted by the courts thus consists of nothing more than an allegation of respondent backed by his selection from available fact. There has been no determination acceptable to any judicial definition of fact. There has been no recognition of petitioners un-entered information thereto. There has been no question of the issues understood by petitioner and permitted answer; such questions as have been asked are detail to supply apparent prior conception and a facade of formality. By reference of respondent attorney's briefs, there is in the record sworn statement of respondent's investigators which is in error stating other than single family occupancy of involved apartments.

The statements purporting to be fact of record are in error. Petitioner has been granted no opportunity thereto in his own defense. No procedure has been provided to properly determine the fact. The administrative action is not consistent with the provisions of law, nor has any base of lawful authority been stated.

Petitioner submits therefore that due process of law has not been afforded his cause.

II.

THIS COURT SHOULD GRANT CERTIORARI TO PROPERLY DETERMINE WHETHER RES JUDICATA WAS PROPERLY CLAIMED BY RESPONDENT AND PROPERLY GRANTED AS A BASIS FOR DISMISSAL OF THE ACTION IN THE LOWER COURT.

Aside from the argument in Point I, which is that petitioner has not, as stated by the lower court been afforded due process, and thus is entitled to necessary procedure for correction, another question remains and should be answered.

Petitioner, having sought to comply with law, was approved in his acts by the original jurisdicial authority. Which was the New York State Temporary State Rent Commission in his decontrol exemption filings.

The rent administrator of the City of New York, using quasi-judicial police authority of the State of New York sought to supercede the prior approval of previous administrators, who had acted using the same authority.

The presentation before the New York Supreme Court failed to raise this issue for adjudication. Raised on appeal, the same court denied petitioner an opinion.

The question brought before the United States District Court in 68 CIV 4984 was that petitioner had complied with the law, and by the stated authority of law was denied the benefits thereof, petitioner of necessity sought to challenge both

the authority of the administrator and the authority of the law that the issue might be resolved. The essential finding of the court ignored the content of petitioner's question, simply stating that language of the case was similar to language in a prior case which challenged the law itself on a statutory provision, and further denying petitioner opportunity to subpoena records or trial dismissed the action as unsubstantial and insufficient.

This lack was specified in detail upon appeal, by the Appeals Court of the Second Circuit.

The action hereto in question 70 CIV 1011, for the benefit of the court dropped the similarity of language, the class challenge and the accent of question of the constitutionality of the involved law, seeking to draw the court's attention to the unconsidered core of the complaint. Which was and remains that petitioner has complied with the requirements of law and is denied by administrative action the provided benefits of law.

The respondent hereto, having used quasi-judicial police authority's now insistent that that authority shall dominate the courts. Demands on every possible ground that the court refuse to try petitioner's complaint.

Petitioner respectfully submits to this court that such a concept when applied in such a manner makes a mockery of law, a circus of the courts, and a bureaucratic autocracy of injustice of the instruments of authority, denying any process by which errors and mistakes of administrative officialdom may be disclosed for correction and redress. There are no simple procedures for

rectifying such errors of precedent. That the court should participate in obstructing correction is contrary to the purpose of the courts.

Petitioner, respectfully will not suggest corrective procedures, but with equal respect for the urgent needs of court propriety, asks this court to consider what the function of the court requires to effect its work. Petitioner believes the procedure and precedent to be faulty and incorrect.

III.

THIS COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE NEW YORK CITY ADMINISTRATORS HAVE UNLAWFULLY SEIZED, CONFISCATED AND ASSIGNED THE LAWFUL PROPERTY OF PETITIONER WITHOUT CAUSE, WARRANT, OATH OR AFFIRMATION BY INDIRECTION, AND SOUGHT TO HIDE THIS FACT OF ILLEGAL SEIZURE.

Petitioner is in fact a victim of an error once entered in a bureaucratic record, without petitioner's knowledge, or opportunity of reply or correction, which has been hidden, and the record defended with all the power of government. The consequence being destructive in the most extreme of petitioner's affairs, finance, rights of ownership and redress.

Petitioner seeks of this court consideration of the facts speaking for themselves in the light of law. Prior consideration by responsible authority having been obfuscated by statements of precedent. The facts are not identical, nor are the circumstances. The minute differences apparent

in the law briefs represent grossly alien facts. Respondent has maintained his claim of what he recorded, there has been neither investigation by the prior courts of fact indicated in available information, or of the provisions of law as different from respondent's heretofore privileged claim.

The logic is simple. Either petitioner is being deprived of property as consequence of rent administrator's orders, or he is not.

The record indicates that petitioner is being deprived of rents, and in danger of foreclosure and loss of his entire investment. The sole deterrent to collection of adequate rents being the orders of the New York City Rent Administrator, and prior orders of the New York State Rent Administrator, and the denials of these rent administrators of required or requested rents.

This denial of rents is either lawful, or it is not within the limitations of lawful purpose; or it is not by lawful authority.

Petitioner has continually sought to demonstrate to the courts that the rent administrator(s) both exceeded their authority, and acted without authority of law to issue orders contrary to the provisions of law. The rent administrator has claimed vague precedents, vague mandates of law, alleged provisions of the law, and the authority of an ex-post-facto provision of law. The law itself has as yet not been used as reference.

The rent administrator has presumed the authority to order assignment of property other-

wise belonging lawfully to petitioner, and in doing so, must have lawful cause. No statement of cause has been advanced, and petitioner continually states that no such cause exists. The courts have not considered the question. Petitioner questions the warrant of seizure, since seizure there was. The order of the rent administrator ordered "Landlord's Report on Statutory Decontrol DR-...is revoked." No such revocation can be defined in law. There was therefore no "warrant." There has been no sworn order, or statement of fact indicated thereto by respondent. Therefore there is no oath or affirmation.

It is the fact of record, that the New York City Rent Administrator has provided no public record, has hidden procedures of determination, has substituted his opinion for judicial consideration, and has both denied petitioner administrative hearings, and obstructed disclosure before the court of all the foregoing.

Petitioner respectfully submits to this court, that the New York City Rent Administrator has not, as required of his office as the lawfully assigned function and responsibility of his position, made full public disclosure of fact surrounding his acts and orders relative hereto; has not acted in accordance with proper and lawful procedure; and has not acted lawfully; but instead has sought by secret misuse of the power of government and authority of law to unlawfully seize the rightful property of petitioner without cause, and without compensation; and further sought to hide his malfeasance by maintaining the information of public record secret, and preventing proper review of his activity by the courts.

IV.

THIS COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE PUBLIC POLICIES AND ADMINISTRATIVE ACTS OF THE NEW YORK CITY RENT ADMINISTRATOR ARE CONSISTENT WITH THE SPECIFICATIONS, PURPOSE AND REQUIRED RESPONSIBILITY OF THE NEW YORK RENT CONTROL LAWS. THE QUESTION BEING HERETO INVOLVED, AND OF VITAL CONSEQUENCE TO THE WELFARE OF TWENTY MILLION RESIDENTS OF THE GREATER NEW YORK AREA.

The specifications and purpose of the Rent Control Law were designed during the manpower and material shortage of World War II, the purpose of these controls has continually been stated to prevent excesses and abuses and maintain a fair market in good health. The nature of the law is economic, and its functioning is to prevent free-market swings with supply and demand.

The conditions of wartime shortage are for the last fifteen years a market surfeit. The major element affecting the New York Housing Market economically is the Rent Control Law and Administration. Which no longer applies to the expensive housing costs, meeting only the circumstance of the lower cost housing, the higher rents having been exempted. The functional administration is such that an official study by the Rand Corporation indicates that while costs have risen at 6% annually controlled rents have risen only 2% annually. Original rents computed costs at 75%. Thus the stated increases are that rents have increased to 167% of 1945-levels and costs have

increased to 285% of 1945 levels. The resultant computation is now that rents equal less than 60% of costs, thus maintenance can only be affected by a loss approximately equal to received rents.

The purpose, provisions, and requirements have not been met. A consequence of this fact is that over three thousand properties involving over twenty thousand dwelling units are abandoned yearly by their owners. Hopelessness prevails among owners, the prior appeals to the courts in individual instances have almost universally been dismissed by the courts, and precedents established, which in the light of changed circumstance is in effect, an order of the court, to reverse the function of the law.

The presentment of the law is based on an emergency in housing, as a consequence of World War II, the major essentials thereby are now the continued malfunction of the Rent Control Law itself, and the population born during and shortly after the war now matured and requiring additional housing. Such a burden is not rightfully an emergency of war, or a cause of war as is politely alleged and accepted by the solons of the courts and Legislature. This existence of police authority which permits the prejudice, bias, and opinions of one political appointee, to supersede constitutional and common law as it affects the real wealth of approximately ten percent of our nation's population has placed excessive power within irresponsible political control of a few men.

The consequence is inevitable, on the pretext of public concern, the power and its use are continued in a manner detrimental to the national

welfare and public good. Further it must remain self-perpetuating and influentially corruptive, with seizure of private wealth and its dissemination controlled by the political leaders of government. The constitutional securities become interference, and must be set aside by authority and force. The function of the courts must become to enforce the dictates of the administrator, and a trap of harassment and obstruction to any opposition.

This circumstance describes the status of greater New York. The housing deteriorates, the living arrangements of the public declines. Tremendous fortunes are accumulated on miniscule investiture by parties politically "connected." Rightful ownership is forced into bankruptcy, and denied rightful petition and redress in the courts.

Petitioner submits to this court that such is his condition, the case is unusual only in that he has managed to sustain his legal battle to this degree. Petitioner also submits to this court, that lacking action of this court, no other responsible authority is sufficiently unattached politically or otherwise uninvolved through precedent and procedure to take any corrective action in the foreseeable future. Petitioner therefore seeks immediate and urgent action by this court.

Conclusion

FOR THE FOREGOING REASONS, THIS PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED AND UPON GRANTING CERTIORARI THIS COURT SHOULD VOID THE RULINGS AND ORDERS OF THE NEW YORK CITY RENT ADMINISTRATOR, AND PROVIDE SUCH OTHER RELIEF AS INDICATED.

Respectfully submitted,

s/ William J. Davenport
Pro Se

Appendix A

Order and Opinion Denying Protest

THE CITY OF NEW YORK
City Rent and Rehabilitation Administration
280 Broadway
New York 7, New York

Protest Docket Nos. CPLA 9638-9641

D.R.O. Docket Nos. 2AD 2248-51

- -X

IN THE MATTER OF THE PROTEST OF

WILLIAM J. DAVENPORT,

Applicant.

- -X

ORDER AND OPINION DENYING PROTEST

On January 11, 1965 the above-named applicant-landlord filed protests against orders issued on December 11, 1964 by the District Rent and Rehabilitation Director of the Bronx District Rent Office concerning the housing accommodations known as 575 East 168th Street, Apartments 1, 2, 5 and 6, Bronx, New York.

These protests are being determined pursuant to Section 2f (11) of the Rent, Eviction and Rehabilitation Regulations.

Order and Opinion Denying Protest

The Administrator has carefully reviewed all the evidence in the record and has considered this matter de novo.

Since the housing accommodations involved in the said protests are within a single structure and since there are common questions involved, the Administrator has consolidated the said protests for disposition.

The issue in this proceeding is whether each of the four subject apartments is eligible for decontrol.

The record shows that between October 15, 1957 and March 13, 1962, the landlord filed five decontrol reports (Section 9 (11), State Rent Regulations) alleging qualifying owner-occupancy as to five of eight dwellings located in the premises as follows:

Date of Filing	Apartment No.	Report Number
Oct. 15, 1957	1	DR-3974
Jan. 6, 1959	6	DR-5420
Jan. 6, 1960	5	DR-6643
Dec. 2, 1960	2	DR-7855
Mar. 13, 1962	7	DR-9261

Order and Opinion Denying Protest

Reported date of inception of landlord occupancy	Reported date of subsequent renting
Oct. 6, 1955	Sept. 16, 1957
Sept. 15, 1957	Dec. 15, 1958
Dec. 16, 1958	Jan. 5, 1960
Dec. 1, 1959	Dec. 1, 1960
Jan. 1, 1961	Mar. 5, 1962

On December 11, 1964, the District Rent Director issued orders rejecting the decontrol reports (Section 2f ([11]) and establishing maximum rents for four of these apartments (Nos. 1, 2, 5 and 6).

The District Rent Director accepted decontrol as to Apartment No. 7 (DR-9261) finding that this apartment was owner-occupied by the present owner for at least one year prior to March 5, 1962 within the meaning and intent of the pertinent section of the Regulations.

The above orders were issued on the basis of a physical inspection of the subject building as well as an examination of the reported records of the Consolidated Edison Company.

The physical inspection conducted by the District Rent Director on March 20, 1964, revealed that Apartments Nos. 1, 2, and 6 were occupied for other than single family occupancy. At the

time of inspection the landlord occupied Apartment No. 3.

The utility company records (supra) show that the landlord has maintained the following accounts:

	FROM	TO
Apt. 1	10/4/55	6/6/58
Apt. 2	1/7/70	Active as of 3/26/64
Apt. 3	3/2/62	Active as of 3/26/64
Apt. 5	12/23/58	1/7/60
Apt. 6	4/1/57	1/6/59
Apt. 7	6/1/60	9/6/62

In rejecting the aforenoted reports the District Rent Director found that:

> Apartment No. 1 had been landlord-occupied for less than two years after the issuance of the certificate of eviction, (Docket No. E-7883; February 2, 1955). It is to be noted that notwithstanding the fact that an account with the Consolidated Edison Company was opened in the landlord's name on October 4, 1955 for Apartment No. 1, the record shows that in April of 1957 (approximately 17 months later) the landlord had opened an account in his name for Apartment No. 6;

Apartment No. 2 was apparently owner-occupied for less than one year. The Consolidated Edison report shows the landlord's account for this apartment was opened on January 7, 1960 and was still active on March 26, 1964 while an account in the name of the landlord had been opened for Apartment No. 7 on June 1, 1960. The period of alleged owner occupancy of Apartment 2 is from December 1959 to December 1960;

Apartment No. 5 had apparently been occupied for less than the required period because the alleged period of occupancy (December 16, 1958-January 7, 1960) clearly overlaps the inception date of occupancy for Apartment No. 2 (December 1, 1959);

Apartment No. 6 was not occupied as a single family unit at the time of the aforenoted inspection of the premises. (Overlapping periods of utility services noted above re: Apartments 1 and 5.)

In protest, the landlord alleges that he has occupied each of the subject apartments for the appropriate period of time and that the subject apartments were, at all times, rented and occupied for single family occupancy.

Specifically, the landlord maintains that the apartments which are the subject of this protest were occupied by him according to the following schedule:

	FROM	TO
Apt. 1	8/15/55	9/15/57
Apt. 2	12/1/59	12/1/60
Apt. 5	12/16/58	1/5/60
Apt. 6	9/15/57	12/15/58

The landlord further contends that rejection of decontrol reports after the passing of between five and three years (when applicable) since the initial filing of the within decontrol reports creates an undue hardship upon the landlord.

After a careful consideration of the entire evidence of record, the Administrator is of the opinion that these protests should be denied.

As the inspector's report (supra) clearly shows, three of the subject apartments (Nos. 1, 2 and 6) were at the time of inspection occupied for other than single family occupancy. Such occupancy in contravention of the Rent Regulations mandates the recontrol of these apartments regardless of other factors which may or may not be consistent with the landlord's alleged right to decontrol thereof.

Concerning Apartment No. 1 the rejection of decontrol is properly based upon the fact that the subject apartment if in fact landlord-occupied was so occupied for a period of less than two years after the issuance of a certificate of eviction. Under the (State Section 9(11), and City)

Rent Regulations decontrol based upon landlord occupancy will not attach.

As aforenoted, the landlord's evidence discloses substantial inconsistencies regarding the correlation between the landlord's alleged occupancy and the utility services rendered to the landlord.

As shown by the Consolidated Edison Company reports, the landlord could not have occupied Apartments No. 1 and 6 at the same time within the contemplation of Section 2f (11) of the Regulations.

Landlord claims to have occupied Apartment No. 2 from December 1, 1959 to December 1, 1960, while the record shows that it was only on January 7, 1960 that a utility account was opened in his name for the subject apartment.

The record shows that as far as Apartment No. 5 is concerned the landlord appears to have had possession thereof and further appears to have shown occupancy thereof for the prescribed period of time. However, the Administrator is, on the basis of this entire record, of the opinion that the landlord has not established occupancy of the nature and extent contemplated by Section 2f (11) of the Regulations as qualifying it for decontrol as will appear (infra).

The landlord has alleged that since acquiring the title to the premises in 1955 he has occupied as his permanent home and residence no less than five of the eight apartments in these premises.

The only substantial and credible evidence submitted by the landlord in support of his position is consistent less with the claim of qualifying the landlord-occupancy than with the District Rent Director's finding of occasional occupancy and use of these accommodations for the production of rental income.

The record shows that throughout the entire period of this landlord's ownership of the subject building the landlord, as a professional seaman, has spent the major portion of his time at sea; that the landlord has utilized the apartments or portions thereof as a "stopping-off" place and has not occupied or intended to occupy them as his permanent residence or home. This latter fact becomes even more apparent from a consideration of the clear indication contained in this record that the landlord during the claimed periods of alleged owner-occupancy of any one of the four subject apartments had rented space in these apartments to a roomer or roomers with whom he would share occupancy.

For example, in reply to the District Rent Director's Notice of Commencement of Proceeding to Fix Maximum Rent, the tenant George Gowins stated as follows:

> "After sharing Mr. Davenport's apartment, as a roomer, friend, and fully both in his presence and absences at sea for over a year I rented the apartment from him when he moved to another apartment in the building. I first rented Apartment No. 1, on the Ground Floor of 575 E. 168 St. We agreed in late

August or early September of 1957 that I was to take the apartment when he vacated and would tenant the apartment within the terms of the Rent Control Law's definition of Single Family Occupancy. During the next 2 or 3 months until Mr. Davenport moved it was a private joke between us as to who was presently the Tenant and who the Roomer."

While it must be conceded that a merchant seaman, as many other persons whose profession or occupation requires long absences from home, is entitled to maintain a permanent home and residence, in the matter under consideration it is clear that the landlord herein did not maintain these various apartments as his permanent home. The landlord has merely attempted to use the availability of the apartments in this building in conjunction with his protracted absences from the premises as a device to create an appearance of qualifying landlord-occupancy without the intent to create the substance of such occupancy. The course pursued by the landlord cannot under all of the circumstances disclosed by the record be permitted to achieve a result that must in the Administrator's opinion be deemed to be in circumvention and evasion of the Rent Law and Regulations.

Decontrol of an accommodation following its occupancy by a landlord essentially contemplates the enhancement of the housing rental market. The mere appearance of qualifying landlord occupancy indicating eligibility for decontrol cannot be permitted to operate as a device to wrongfully

divest tenants of all of the protections of the Rent Law and Regulations or to obtain unwarranted rentals for the landlord.

To permit the result which the landlord seeks to achieve herein would be totally inconsistent with the purpose, intent and meaning of the Rent Law and Regulations generally, and of Section 2f (11) specifically.

Thus, on the basis of the entire evidence of record, the Administrator finds that this landlord's occupancy of the subject apartments does not fall within the purview, intent or definition of the owner-occupancy intended by the Regulations to provide a valid basis for decontrol.

The District Rent Director's orders are proper and should be affirmed.

Therefore, in accordance with the provisions of the City Rent and Rehabilitation Law, as amended, and the Rent, Eviction and Rehabilitation Regulations promulgated thereunder, it is

ORDERED, that these protests be, and the same hereby are, denied, and that the District Rent Director's orders be, and the same hereby are, affirmed.

ISSUED DEC 16 1965

s/ Hortense W. Gabel
HORTENSE W. GABEL
Administrator

Order and Opinion Denying Protest

I hereby certify that this is a true copy of an order issued on the above date.

s/ Joseph
(Certifying Officer)

Appendix B

Opinion of New York Supreme Court

(4/29/82)

N.Y.L.J. p. 18, col. 1

MATTER OF BERMAN--This is an Article 78 proceeding to review a determination of the rent administrator which revoked decontrol of four out of five apartments in the subject premises which contains a total of eight apartments. Petitioner does not contest the administrator's determination as to apartment number "2". Thus, this review concerns the respondent's revocation of decontrol status to apartments 1, 5 and 6 of the subject premises. The original decontrol of these apartments as filed for by petitioner was allegedly due to owner occupancy of five of the apartments beginning with 1955. The record submitted herein is replete with inconsistencies in the landlord's chronological sequence of alleged owner-occupancy of the various apartments. It clearly appears that the landlord deliberately made an effort to create an appearance of technical compliance with the rent law for purposes of decontrol by living in five different apartments over a period of seven or eight years. In addition, evidence adduced by respondent shows petitioner sharing several apartments with other tenants in the building in clear violation of the rent law. Moreover, the records of the Consolidated Edison Company disclose several inconsistencies in the landlord's version of the periods alleged to have been spent in owner occupancy of the various apartments. In all petitioner has failed to satisfy the requirement of bona fide owner-occupancy of the apartments in issue herein in order to

receive the benefits of decontrol under the rent regulations. Respondent's determination, therefore is amply supported by the record submitted and should not be disturbed. Accordingly the application is denied and the petition dismissed. Settle order.

Appendix C

Opinion of United States District Court

(Filed 7/28/69)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

WILLIAM DAVENPORT,

Plaintiff,

- against -

No. 36038

68 Civ. 4984

FREDERICK S. BERMAN, individually, and as Commissioner of Office of Rent Control, MARIE GAMBINO, individually, JOHN V. LINDSAY, MAYOR OF THE CITY OF NEW YORK, and COMMITTEE ON GENERAL WELFARE,

Defendants.

- -x

CANNELLA, J.

Motion by the plaintiff to convene a three-judge court and for injunctive relief, is denied.

Motion by the defendants pursuant to Rule 12(b)(6) and Rule 12(b)(1) of the Federal Rules of Civil Procedure, to dismiss the complaint for failure to state a claim upon which relief can be granted and for lack of jurisdiction, is granted.

Opinion of United States District Court

This is a class action challenging the constitutional validity of the New York City Rent, Eviction and Rehabilitation Law, hereinafter "Rent Control Law."[1]

Plaintiff identifies himself as a black person who owns a building at 575 East 169th Street, Bronx, New York and who is "burdened" by the "obstacle of rent control." He brings this action as a class action on behalf of himself and "other landlords of dwelling accommodations in the City of New York" which are subject to rent control, and on behalf of "tenants in rent controlled housing accommodations," and on behalf of "tenants in rent controlled housing accommodations," and on behalf of "tenants in over-occupied premises."[2]

The defendants are Frederick S. Berman, individually, and as Commissioner of Office Rent Control, "Marie Gambino"[3] individually, John V. Lindsay, Mayor of the City of New York, and Committee on General Welfare.

Essentially, plaintiff seeks the following relief: "Enjoining the defendants from enforcing or in any way implementing the Rent Control Law of the City of New York, or from taking any further action under authority claimed under said Rent Control Law; Enjoining the defendants from enacting any form of involuntary servitude of the plaintiff or any member of his class; Declaring Local Law Number 30 of the City of New York of

1. Title Y, Ch. 51 of the N.Y. City Admin. Code.
2. In view of the disposition of the case, the Court will not pass on the make-up of the proposed class.
3. Identified by answering papers to be Josephine Gambino.

1962 and all other Rent Control Laws and Regulations void and unconstitutional.' In connection with the requests for injunctive relief, plaintiff seeks the convening of a three-judge court to pass upon the various claims.

The defendants oppose the application in all respects and move to dismiss the complaint for failure to state a claim upon which relief can be granted and for lack of jurisdiction, and, of course, for a denial of the application for a three-judge court on the grounds of insubstantial federal question.

With the exception of two areas, this complaint raises issues identical to the ones which were litigated in this district, and which resulted in the denial of an application for a three-judge court, the dismissal of the complaint for lack of jurisdiction and for failure to state a claim. Israel v. City Rent & Rehabilitation Administration of the City of New York, 205 F. Supp. 906 (S.D.N.Y. 1962). This Court denies the instant application for the same reasons, insofar as the application raises issues which have been decided in this district. The court in Israel, Pollack, J., found

> The constitutionality of the Rent Control Statute is well settled. The statute does not violate due process ... equal protection ... taking of property without compensation ... (or) impairment of contract rights ....
>
> No substantial federal question is presented as to the continuation of the emergency giving rise to rent control legislation. The determination to that effect by the City

Council, dated March 17, 1967, is not without basis in fact, nor is it arbitrary ....

Insofar as plaintiff seeks relief under the civil rights statutes from any government body or agency, the claim is barred. ...

No three Judge Court is required with respect to plaintiff's constitutional attack on the Rent Control Statutes. The enabling act specifically vested authority in the City of New York to operate Rent Control, and that program is operated entirely by officials of the City.

A three Judge Court is required to be convened only where an injunction is sought restraining enforcement of a state law by 'any officer of such state'.... A three Judge Court is not convened to consider 'local ordinances or statutes having only local application.' (citations omitted) Israel v. City Rent and Rehabilitation Administration of the City of New York, 265 F. Supp. 910, 911.

There are two additional issues raised by this complaint and the Court similarly finds them lacking in substantiality and dismisses the complaint as to those issues: a claim of discrimination under the Thirteenth Amendment on the basis of his black identification; and a claim of lack of due process in state proceedings to decontrol.

The Thirteenth Amendment claim suffers from the same infirmity as does the entire complaint; it is conclusory and fails to set forth any facts. In any event, the Supreme Court rejected a similar

argument in connection with prior rent control laws, and this Court rejects the argument as presenting an insubstantial federal question precluded by prior litigation. Marcus Brown Co. v. Feldman, 256 U.S. 170 (1921).

As to the claim of lack of due process of law with respect to the plaintiff's decontrol proceedings, the Court finds that the requirements of due process have been met by adequate proceedings and judicial review in the state court. Further, the Court determines that the complaint is without merit and lacks the substantiality requisite to the institution of a federal claim.

Accordingly, plaintiff's motion for a three-judge court and injunctive relief is denied, and the defendants' motions to dismiss are granted. The complaint is dismissed.

So ordered.

Dated: July 25, 1969
New York, New York

s/ JOHN M. CANNELLA
U.S.D.J.

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 345—September Term, 1969.

(Argued December 5, 1969 Decided December 29, 1969.)

Docket No. 34027

WILLIAM DAVENPORT,

Plaintiff-Appellant,

—against—

FREDERICK S. BERMAN, individually, and as Commissioner of Office of Rent Control, MARIE GAMBINO, individually, JOHN V. LINDSAY, MAYOR OF THE CITY OF NEW YORK, and COMMITTEE ON GENERAL WELFARE,

Defendants-Appellees.

Before:

WATERMAN, HAYS and FRIENDLY,

Circuit Judges.

Appeal from denial of application for three-judge court and dismissal of complaint attacking New York City rent control. Order of United States District Court for the Southern District of New York, John M. Cannella, *J.*, affirmed.

GERD CARSCHENEL, New York, N. Y., *for Plaintiff-Appellant.*

WILLIAM E. ROSEN, New York, N. Y. (Daniel W. Joy, Acting General Counsel, Office of Rent Control, Department of Rent and Housing Maintenance, New York City Housing and Development Administration, on the brief), *for Defendants-Appellees Berman and Gambino.*

IRVING GRAS, New York, N. Y. (J. Lee Rankin, Corporation Counsel, Stanley Buchsbaum, on the brief), *for Appellees Lindsay and Committee on General Welfare.*

PER CURIAM:

Challenging rent control in New York City,[1] plaintiff William Davenport brought suit against Frederick S. Berman, individually and as Commissioner of the New York City Office of Rent Control, John V. Lindsay, Mayor of the City of New York, The Committee on General Welfare, and Marie Gambino.[2] The United States District Court for the Southern District of New York, John M. Cannella, *J.*, denied plaintiff's application for a three-judge court and dismissed the complaint. Davenport appeals and we affirm.

Appellant is a Negro landlord of a rent-controlled apartment house in the Bronx. The complaint and papers in opposition to defendants' motions to dismiss present a

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1 See New York City Rent and Rehabilitation Law, N. Y. C. Adm. Code, Ch. 51, Title Y, authorized by Local Emergency Housing Rent Control Law, N. Y. Unconsol. Laws §§8601-17 (McKinney Supp. 1969).

2 We put to one side the inaccuracies in the papers; e.g., Marie Gambino is apparently the incorrect name for Josephine Gambino, a rent administration official.

variety of theories, including the averment that plaintiff sues as a representative of both landlords and tenants. As best we can make out, the claims still pressed in this court are as follows: (1) Rent control deprives Negroes of the equal enjoyment and use of property because black tenants are thereby kept in inadequate housing and denied the opportunity to be charged higher rents which would maintain decent housing for them; this also discriminates against Negro landlords. (2) The procedures for decontrol of apartments violate due process and were applied discriminatorily against Negro landlords, including appellant. (3) Rent control forces appellant into involuntary servitude.

To the extent that the complaint and papers allege loss of money or property rights, absent racial discrimination, they gave the district court no sufficient basis for determining that plaintiff's claim met the jurisdictional minimum of either 28 U.S.C. §1331 or 28 U.S.C. §1332 and did not meet the requirements of 28 U.S.C. §1343(3). See *Hagan* v. *Eastman*, slip op. 621 (2d Cir. Nov. 28, 1969). While the claim of discrimination might be covered by 28 U.S.C. §1343 (3), mere conclusory statements that rent control furthers racial discrimination, without supporting facts, are not sufficient. *Powell* v. *Workmen's Compensation Board*, 327 F.2d 131, 137 (2d Cir. 1968). The claim of involuntary servitude is frivolous. *Marcus Brown Holding Co.* v. *Feldman*, 256 U.S. 170, 199 (1921).

Judgment affirmed.

Appendix E

Opinion of United States District Court

(Filed 5/11/70)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x x

WILLIAM J. DAVENPORT, :

Plaintiff, :

-against- :

CITY RENT and REHABILITATION ADMINISTRATION of the City of NEW YORK, JOHN F. LINDSAY, as Mayor of City of New York, :

Defendants. :

- -x x

TENNEY, J.

Plaintiff, appearing pro se, apparently seeks preliminary injunctive relief: (a) enjoining the enforcement of certain orders of the New York City Rent Administrator which reinstated rent controls on four apartments that had allegedly been previously decontrolled by certain action of the plaintiff taken in compliance with statutory decontrol procedures; (b) "Enjoining the City of New York and Department of Buildings from enforcement of any Multiple Dwelling Law, where violation may have been the consequential result of those orders"; and (c) "Enjoining the Civil

Court and Sheriff of the County of the Bronx from enforcing collection of damages by sale, or garnishee of rents or wages, judgments which are the direct consequence of those orders." Defendants, Office of Rent Control, a division of the Department of Rent and Housing Maintenance within the Housing and Development Administration of the City of New York, and Mayor John V. Lindsay seek an order pursuant to Rule 12(b) of the Fed. R. Civ. P. dismissing the complaint filed herein on the grounds that the claims raised are barred by the principle of res judicata and that it fails to state a claim upon which relief can be granted. Additionally, defendants seek an order pursuant to Rule 45(b) of the Fed. R. Civ. P. quashing a subpoena duces tecum served upon them by plaintiff on April 10, 1970 on the grounds that such subpoena is unreasonable and oppressive.

As so frequently appears when plaintiffs move pro se, the complaint filed herein is verbose and in large part inapposite to the legal redress sought, which the Court must struggle to discern. Cognizant, however, of plaintiff's limited resources and unfamiliarity with legal procedure, the Court has attempted to meet its obligations by a thorough review of the record.

It appears that plaintiff is the owner of an eight-unit apartment building located at 575 East 168th Street, Bronx, New York. In 1965, proceedings were opened by the District Office of the City Rent Administration to determine whether certain apartments claimed by plaintiff, as landlord, to be decontrolled were properly subject to the pro-

visions of the New York City Rent, Eviction and Rehabilitation Law[1] (hereinafter referred to as the "City Rent Control Law"). At these proceedings plaintiff was afforded an opportunity to answer and present relevant evidence. It was ultimately held that certain of the apartments in question did not qualify for statutory decontrol, but rather were subject to the provisions of the City Rent Control Law. Pursuant to applicable provisions of the City Rent Control Law, plaintiff took an administrative appeal from this decision by filing a protest to the City Rent Administrator. After issuance of an order denying his protest, plaintiff sought and obtained judicial review of the Administrator's final determination in the Supreme Court of the State of New York. The Supreme Court rejected plaintiff's contentions and found that he had "failed to satisfy the requirements of bona fide owner-occupancy of the apartments in issue herein in order to receive the benefits of decontrol under the rent regulations. Respondent's determination, therefore, is amply supported by the record submitted and should not be disturbed." Matter of Berman, N.Y.L.J., April 29, 1966, at 18, col. 1. This ruling was affirmed without opinion by the Appellate Division of the Supreme Court. Davenport v. Berman, 27 App. Div. 2d 903, 280 N.Y.S.2d 534 (App. Div. 1967).

Thereafter, plaintiff instituted a class action in this court challenging the constitutional validity

1. New York City Rent and Rehabilitation Law, N.Y.C. Adm. Code, Ch. 51, Title Y, authorized by Local Emergency Housing Rent Control Law, N.Y. Unconsol. Laws §§ 8601-617 (McKinney Supp. 1969).

of the City Rent Control Law. Named as defendants in that action were Frederick S. Berman, individually and as Commissioner of the Office of Rent Control, Marie Gambino (the incorrect name for Joseph Gambino, a rent administration official), Mayor John V. Lindsay and the Committee on General Welfare. Essentially, plaintiff in that action sought to enjoin the defendants from enforcing or in any way implementing the City Rent Control Law. In denying plaintiff's motion and granting the defendants' motion to dismiss the complaint, Judge Cannella upheld the constitutionality of the rent control statute and found plaintiff's claim of lack of due process of law with respect to the decontrol proceedings, also raised in the complaint therein, to be without merit. Specifically, the Court found that the requirements of due process of law had been met by adequate proceedings and judicial review in the state court. Davenport v. Berman, 68 Civ. 4984 (S.D.N.Y., filed July 28, 1969). Although this claim of lack of due process of law in the procedures governing the decontrol of apartments was raised on appeal, the Court of Appeals for the Second Circuit affirmed Judge Cannella's order. Davenport v. Berman, Docket No. 34027 (2d Cir., filed Dec. 29, 1969).

However earnestly and forcefully plaintiff may argue his cause, I must conclude that "[t]o permit the maintenance of the present action would do violence to the wholesome principle of res judicata and its purpose to terminate litigation where parties have had full opportunity to be heard on the merits of their respective claims." Grattan v. Societa Per Azzioni Cotonificio Cantoni,

151 F. Supp. 813, 817 (S.D.N.Y. 1957), aff'd, 251 F.2d 343 (2d Cir. 1958). Even assuming that plaintiff has touched upon some additional argument in his present complaint, the prior decisions on the merits, which remain unmodified and involved the identical parties in the present suit, except for some slight change in names, foreclose relitigation of the adequacy of the administrative proceedings and state judicial review thereof, which is at the crux of the instant suit. United States v. Munsingwear, 340 U.S. 36 (1950).

Accordingly, plaintiff's motion for injunctive relief is denied and defendants' motions to dismiss the complaint herein and to quash the plaintiff's subpoena duces tecum are granted.

So ordered.

Dated: New York, New York.

May 11, 1970.

s/ Charles Tenney
U.S.D.J.

William J. Davenport, Plaintiff,

-against-

City Rent and Rehabilitation Administration of the City of New York, John F. Lindsay, as Mayor of the City of New York,

Defendants.